

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 25

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CAMPAIGN FOR FISCAL EQUITY, INC., *et al.*, : Hon. Leland DeGrasse  
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Plaintiffs, : Index No.: 111070/93  
: :  
v. : Special Referees:  
: Hon. William C. Thompson  
THE STATE OF NEW YORK, *et al.*, : Hon. E. Leo Milonas  
: John D. Feerick, Esq.  
Defendants. :  
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**STATEMENT OF DR. THOMAS SOBOL**

**Background and Qualifications**

1. I am the Christian A. Johnson Professor of Outstanding Educational Practice, Teachers College, Columbia University, a position I have held since 1995. Before that, from 1987-1995, I was the Commissioner of Education for the state of New York. During my 50-year career in public education, I have served as a high school English teacher and Department Chair, as Assistant Superintendent for Instruction for the Great Neck Public Schools, and as the Superintendent of Schools in Scarsdale, New York, for 16 years.

2. In my current position I teach graduate courses in educational policy, educational administration, and ethical issues in educational leadership. I direct the Inquiry Program, a doctoral program for school administrators in mid-career, and co-direct the FSAA, a program for outstanding teachers who aspire to become school principals.

3. In preparation for my testimony today, I have read the accountability proposal of the Sound Basic Education Task Force, the Summary of Plaintiffs' Position on Accountability, the accountability proposals of the Zarb Commission, which I understand have been adopted by

the governor, and the Plan of the City of New York to Provide a Sound Basic Education to All Its Students. From my many years of teaching, managing schools, and as serving as New York State's Commissioner of Education, I am, of course, well aware of the accountability requirements of the federal No Child Left Behind Act, the state's current accountability system (parts of which were established under my watch), the vast literature in the field of educational administration and educational accountability, and the actual practices and problems involved in dealing with issues of educational accountability in the state of New York and the city of New York.

### **Overview of the Sound Basic Education Task Force Report**

4. Although I did not serve on the Sound Basic Education Task Force on Accountability, I have been aware of its activities, and I have been impressed by the thoroughness and quality of its work. The task force's membership includes many of the most knowledgeable people in the state on these issues, and all of the major education stakeholders in the city and the state are represented, as well as individuals from the State Education Department, the New York City Department of Education, and the business community. The expert consultants included Ted Sanders, President of Education Commission of the States, who previously was the undersecretary of education during the first Bush administration, as well as a number of leading national scholars. The management consultant firm of BearingPoint, Inc., conducted a number of specific studies and analyses for the group.

5. The task force's report is comprehensive, insightful, and practical. The plan accepts, as we must, all of the accountability strictures of the federal No Child Left Behind Act, with its heavy emphasis on sanctions for schools and districts whose students do not achieve at prescribed testing levels, but offsets them with a sensible emphasis on adequacy of resources,

and means to help schools and districts improve their capacity to provide effective instruction to all students, in a cost-effective manner.

6. Last spring, well before the plaintiffs contacted me to testify at these hearings, I included the task force report as required reading in my graduate course on education leadership. The students in that course—many of whom are school principals and administrators in the New York City public schools—reacted positively to the plan’s vision and to its operational details. The one aspect of the plan that raised substantial questions was the suggested use of “distinguished educators” to mentor principals of schools with sustained poor performance. This practice has apparently worked well in Kentucky, but many of my New York students were not persuaded that it would work here. Apparently, the plaintiffs have received similar criticism from other sources, and their current position paper has eliminated this aspect of the original plan.

7. One of the most significant features of the task force report is its well-integrated, comprehensive approach to this incredibly complex problem. The plan defines accountability in terms of progress toward improved student achievement and is built around the five major systemic actions that need to be taken to reach that goal: adequate funding, comprehensive planning, effective use of resources, proper assessment of outcomes, and appropriate consequences for poor performance. Each of these components is of critical importance, and each must be fully addressed for an accountability system to be fair and effective. Unfortunately, many so-called accountability systems in effect today focus only on assessment and sanctions and ignore the critical funding, planning, and capacity building components that are necessary to provide meaningful opportunities to all of the state’s students.

8. The Zarb Commission’s accountability proposals contain some good ideas, but they are presented in a scattershot manner and they do not amount to a comprehensive, well-

considered *plan* for maximizing student achievement. Most of their recommendations focus on sanctioning administrators and teachers in failing schools and on closing or restructuring these schools, without examining the major systemic issues that are at the root of the problems of poor performance in a large urban school district like New York City. The critical need is to assure adequate systemic resources and adequate systemic planning and capacity building. Quality teaching, programs to serve students with special needs, and other programs necessary to improve instructional capacity need to be mounted in all schools, not just those that this year are on the SURR list or on the NCLB list of schools in need of improvement. Otherwise the system will just be chasing its tail by closing schools and transferring their poor teachers and poor practices to other schools in the system, which then are likely to fail unless the underlying systemic issues are directly confronted. The Sound Basic Education Task Force takes an appropriate systemic reform approach. The Zarb Commission does not.

### **The Independent Office of Educational Accountability**

9. Before discussing some of the specific aspects of the task force report, I want to comment on the proposal for the establishment of an “Independent Office of State Accountability,” which the Zarb Commission and the governor have proposed, and the task force has wisely rejected. Simply stated, there is no need to create another state-level bureaucracy to do the work that the State Education Department should be doing.

10. Neither the Zarb Commission nor the governor have set forth any factual basis for establishing this new office. If the governor believes that the State Education Department is not doing an effective job in monitoring school district practices today, he should suggest means for improving its performance, and not seek to create another layer of state bureaucracy. I believe

that the State Education Department is not currently receiving sufficient funding from the legislature to carry out effectively its current accountability and oversight functions. For example, while SED had a staff of over 90 professionals to monitor low-performing schools in New York City in the last years of my term as commissioner, currently they are attempting to carry out the same functions with fewer than 30 professionals.

11. Candidly speaking, I think the proposal for a new “independent” accountability office is essentially an attempt by the governor to gain more political control over educational operations in the state. Although the regents are appointed by the legislature, and the regents have the sole authority to appoint the commissioner of education, under the Zarb proposal, the governor would have a primary role, and, in essence, a veto power over the appointment of the head of the new accountability entity. If the governor’s constitutionally established role in the governance of education is to be reconsidered, this should be done after full discussion and deliberation of the fundamental separation of powers issues at stake and not through a back door maneuver at the remedial stage of a school funding case.

12. This is not the first time that a New York State governor has attempted to establish an “independent” education accountability office. In the 1970s, Governor Rockefeller called for the creation of an “Office of Education Inspector General.” Despite substantial opposition from the legislature and the regents, he managed to establish the office near the end of his term. Rockefeller appointed his special assistant, Daniel Klepak, to head the new entity. Klepak had a rocky experience, as the few reports and activities he undertook elicited strong partisan reactions. Two years after its creation, Governor Carey abolished the office. I suspect that a similar fate would await any new accountability office that Governor Pataki might manage to establish in the present circumstances.

## **Adequate Funding<sup>1</sup>**

13. Adequate funding is, of course, the *sine qua non* for ensuring that all students have the opportunity for a sound basic education. This is the whole point of the Court of Appeals' order in this case. The regents made clear when they adopted the extensive standards-based reforms known as the Regents Learning Standards that virtually all students can achieve at these levels, *if they are provided appropriate supports and services*. It is critical, therefore, that any recommendations issued by this court and any legislation subsequently adopted that impose new accountability requirements be accompanied by sufficient funding to allow schools, school districts, and the State Education Department to carry out their assigned responsibilities effectively. In other words, the new accountability requirements should take effect only in conjunction with a guaranteed phase-in of the substantial funding increases that are necessary.

14. Adequacy of funding must be made a permanent part of the state's education finance system. School districts cannot plan effectively and implement sound reforms if they don't know until the beginning of the school year or later how much funding they will actually receive. That is why it is critical that the court finally determine the specific amount of increased funding that is necessary to provide New York City's students the opportunity for a sound basic education, that this amount be phased in on a definitive four-year schedule, and that this funding cycle be followed by a further costing-out study and a subsequent definitive phase-in of any additional funding that may be required to meet future needs.

15. Plaintiffs have also proposed that the court order a specific appropriation to provide the State Education Department the resources it needs to carry out its enhanced

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<sup>1</sup> The following paragraphs of this statement discuss and endorse plaintiffs' proposal for a comprehensive accountability system. By "plaintiffs' proposal," I mean the accountability report of the Sound Basic Education Task Force, as supplemented and modified by the Summary of Plaintiffs' Position on Accountability, dated October 13, 2004.

accountability responsibilities. SED will be called upon to vastly improve its current data systems, to review comprehensive education plans, and to establish teams of highly qualified professional to assist schools with sustained poor performance. These and other critical tasks cannot be carried out—or cannot be carried out well—if SED lacks the personnel and the resources needed to do the job.

### **Comprehensive Planning**

16. I know that many skeptics have said that any additional funding that the court may order for the New York City public schools will amount to throwing good money after bad. The sophisticated comprehensive planning requirements that the Sound Basic Education Task Force has proposed constitute the prime mechanism for meeting the challenge implied by those comments and making sure that any additional funding—as well as present funding—is spent well. Plaintiffs’ comprehensive planning proposal directly confronts the need both to create systemic accountability and to build the capacity in every school in the system to effectively coordinate the resource phase-in so that, at the end of the four-year phase-in period, all of the city’s schools will truly be able to provide the opportunity for a sound basic education to all of their students. The city’s comprehensive plan would address each of the priority areas that were identified by Justice DeGrasse and the Court of Appeals. There also would be a special focus on the teacher quality and class size reduction issues, which I understand that Justice DeGrasse emphasized in his charge to this panel.

17. Plaintiffs’ comprehensive planning requirements call upon the chancellor to identify the specific programs and reforms he would mount to improve teacher quality, reduce class sizes, improve facilities, etc. He would also need to set forth benchmarks and achievement

indicators by which progress toward stated goals could be measured. In order to ensure that the school system devotes the time and resources needed for this critical planning enterprise, the proposal calls for a dramatic reduction in 100 or so current state planning and reporting requirements so that virtually all planning activities in the city can be concentrated on this one major effort. The regents have already begun to take steps to accomplish this reform.

18. The comprehensive plan would cover all four years of the funding phase-in. Annual updates would be required to describe any modifications to the original plan and to report on the extent to which the benchmarks and indicators set forth in the plan have actually been achieved. The plan would, of course, be subject to review by the commissioner, but the proposal is carefully worded to ensure that this constitutionally required state review process is done in a way that avoids micromanaging or excessive state interference with the appropriate discretionary prerogatives of the chancellor and the mayor.

19. One of the essential elements of the plaintiffs' proposal is its emphasis on school-based budgeting and school-based planning. The proposal also requires a specific methodology for distributing funds to the 1,100 schools in the city system, in order to comply with the Court of Appeals' insistence that each *school* has sufficient resources to provide its students the opportunity for a sound basic education.

20. In the huge New York City school system, although basic policy positions can be articulated from above, they cannot be effectively implemented unless principals, teachers, and parents at the school level are given significant responsibility for developing their own programs, and are fully committed to the success of these programs. One of the major problems with many education accountability plans—including the No Child Left Behind Act—is that they impose a heavy regime of top-down state regulations that stifle local discretion and school-level

participation and creativity. I stressed this point more than a decade ago in the New Compact for Learning, which I authored and the Regents adopted as a matter of state policy, a policy that remains in effect to this day.

21. The plan's emphasis on public engagement by administrators, teachers, parents, and the public at large, in both district-level and school-level planning, is important for similar reasons. Meaningful public input provides important perspectives on the broad range of educational policy issues. Moreover, district-wide or school-wide policies and practices, no matter how wellconceived, will not be effectively implemented in practice if they lack the understanding and enthusiastic support of the teachers and parents who need to carry them out.

22. Plaintiffs have proposed that the first comprehensive plan be completed by April 30, 2005. This is a very short timeline for such a huge responsibility, but I believe that this timeline can be met, and that it must be met, if New York City's school children are not to be denied another year of their constitutional entitlements. The phase-in of the increased funding, which I anticipate the court will order, should obviously begin with the 2005-2006 school year. If that money is to be spent well, the comprehensive plan should be in effect before next September.

23. The mayor's existing "Plan of the City of New York to Provide a Sound Basic Education to All Its Students" provides a good basis for developing the type of extensive comprehensive plan that is envisioned by the task force report, but it by no means contains the detail, the specific benchmarks and objectives, and the public input that are required. Fortunately, the New York City Council recently created a Commission on the Implementation of CFE, which will be reviewing the chancellor's plan, holding extensive public hearings, and issuing additional analyses and proposals regarding the elements of a comprehensive plan.

Arthur Levine, president of Teacher's College, is the commission co-chair, and I know that he will be involving a number of Teacher's College faculty members in this important work. Given the fact that the mayor's plan, in effect, provides a good "first draft" for a comprehensive plan, and that the city council's commission has already initiated a wide-ranging public engagement process, I think it is eminently feasible for the city to develop a solid comprehensive sound basic education plan by next spring.

### **Effective Use of Resources**

24. The comprehensive sound basic education plan required by plaintiffs' proposal must demonstrate how resources will be used effectively. Plaintiffs' proposal also recognizes that in addition to sufficiency of resources and comprehensive planning, steps must be taken to identify and eliminate "statutory, regulatory and contractual provisions that may present serious barriers to successful implementation of the plan." Plaintiffs wisely have not attempted to identify at this time the particular statutes and regulations that may be anachronistic or inconsistent with present student needs. To do so would embroil them and the court in needless controversy and confrontation at this point in the process. Presumably, once the prospect of enhanced funding has become a reality and all the stakeholders in the system become engaged in a productive planning process, provisions that present obstacles to achieving the plan's objectives can be reconsidered and renegotiated by the affected parties in an appropriate, cooperative way.

25. The other major efficiency issue stressed by the plaintiffs' proposal is the need to enhance the SED's database and information systems to ensure that they promptly provide the necessary information about the relationship between resources and results that districts and

schools require in order to use resources effectively. Many of SED's current data systems are antiquated and ineffective, largely because of shortfalls in state funding. A major amount of student data and financial reporting is still done through laborious paper forms, rather than through efficient electronic databases. Although SED has begun to update its information processing capability, this process must be accelerated and quickly completed if effective accountability is to be achieved in New York City and throughout the state.

### **Assessment of Student Performance**

26. The current state accountability system, prodded by requirements of the federal No Child Left Behind Act, already contains a panoply of student testing requirements. For the most part, more tests do not need to be developed, but because so much of the accountability system—and so much of each student's future—hinges on test results, the regents need to do everything reasonably possible to ensure that their existing tests are valid and reliable. Plaintiffs' proposal for a thorough validity review by an independent panel of psychometricians is a good way to accomplish this important task.

### **Consequences for Sustained Poor Performance**

27. Plaintiffs' proposal does not add any additional sanctions to those currently in effect under federal and state law. Instead, it sensibly focuses on the need to provide appropriate mechanisms to intervene in schools with sustained poor performance and to ensure as quickly as possible that students in those schools are provided with the opportunity for a sound basic education. The proposal specifies that corrective action plans for poorly performing schools should consider the adequacy of funding and whether at the school level there are statutory,

regulatory, or contractual provisions standing in the way of student progress, in addition to reviewing the performance and capability of the principals and teachers.

28. The plan also calls for the creation of state intervention teams to assist local administrators and school staff in developing and implementing a restructuring plan for a school that has failed to make sufficient progress after four consecutive years. The members of this team would be specialists in curriculum development, professional development, management, or other specific areas for which the school needs technical assistance. The team would help develop a restructuring plan, provide technical assistance in its implementation, and monitor the school's progress in meeting the plan's goals. The regents have already begun to discuss ways to implement a state intervention team approach, and I think that there will be broad support for this concept.

### **Annual Sound Basic Education Report by the Regents**

29. The final feature of the plaintiffs' proposal is its call for the regents to provide an annual report to the governor and the legislature to review and assess the state of the state's education finance system and the related accountability system. In essence, this report would provide an annual update on the state of compliance with constitutional requirements. Public input into the report's development, and public hearings on the regents' final conclusions and recommendations are important additional features of the plaintiffs' proposal.

### **Conclusion**

30. In conclusion, let me summarize the features of plaintiffs' proposal that I like most:

- First, it is comprehensive and systemic. It addresses each of the elements of a sound accountability system: adequate funding, comprehensive planning, effective use of resources, assessment of performance, consequences for sustained poor performance, and annual public reporting.
- It is inclusive in its design and operation, including state officials, local boards of education, school leaders, teachers, parents, other community members, and students themselves.
- It is focused on the goal of this entire matter -- the provision of a sound basic education for all of the students of New York City, and by extension, of New York State.
- It seeks its remedies through existing governmental structures, without creating new layers of bureaucracy.
- It recognizes the mutual nature of the accountability we need. Government should hold the people -- principals, teachers, parents, students -- accountable for their part in achieving results; but, mutually, in our democracy, the people should hold the government accountable, as well, for providing the needed resources and assistance.
- Finally, it realizes that, as necessary as plans and strictures surely are, in the end significant improvement in education comes from the people themselves. You can regulate badness out of the system, but you cannot regulate goodness in, because goodness in education is the product of the hearts, minds, and energies of the people involved. We need an accountability system that provides top-down support for bottom-up reform.